IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24/07/2003

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The Honourable Mr. Justice V.S. SIRPURKAR

W.P. No.1185 OF 1995

Cholan Roadways Corporation Ltd.
represented by its Managing Director
Kumbakonam ..... Petitioner

-Vs-

1. The Presiding Officer
Labour Court, Cuddalore

2. T. Appadurai

3. A.N. Ameerdoss

4. V. Ramadurai ..... Respondents

Petition under Art.226 of the Constitution of India
praying for a Writ of Certiorari as stated in the petition

For Petitioner :: Mr. T. Arulraj

For Respondents :: Mr. Ganesan

:ORDER

This writ petition is directed against the award of the Labour Court whereby, the respondents herein were directed to be reinstated with continuity of service but without backwages. The respondents have, however, not challenged the denial of backwages. The case of the three respondents, as is clear from the award, is that they were appointed as 'cleaners' in Mannargudi Branch by the Branch Manager of Cholan Roadways Corporation. Their further case was that they were to attend daily for cleaning the buses for which they used to be paid Rs.8/- per day. They further pleaded that on or about 1-6-1987, they were informed by the Branch Manager that they were removed from the service on the instructions of the Managing Director. They had pleaded that they had worked more than 240 days in the year 1986. They, therefore, sought their reinstatement by approaching the employerCorporation and ultimately approached the Labour Officer and, on failure of the

conciliation, filed a claim petition before the Labour Court.

2. The employer-Corporation pleaded that these respondents were not 'workmen' as contemplated under Sec.2(s) of the Industrial Disputes Act (in short 'I.D. Act'). They were in fact the 'independent contractors' and they used to voluntarily work as cleaners for the buses for some days. The employer further pleaded that they used to be paid Re.1/- per bus and not Rs.8/- per day as per their claim. It was denied that they could raise the dispute under the I.D. Act. It was specifically pleaded that there was no compulsion to work daily and regularly nor were they subject to the managerial control in the matter of their work or their daily attendance. It was also denied that they were actually removed from service. It was also further denied that they were working regularly from the dates mentioned in the claim petition.

3. On this basis, the parties went for trial. Few witnesses were examined on behalf of the petitioners while some others were examined on behalf of the employer. On the basis of the evidence adduced, the Labour Court came to the conclusion that though the claimpetitioners were not 'workmen' of the employer in stricto sensu, they could not have been removed and as such they were entitled to be reinstated but under the circumstances without backwages. It is this judgment which is in challenge before me in this writ petition.

4. Learned counsel appearing on behalf of the petitioner-employer pointed out that these persons could not be called to be the ' workmen' as they were not paid any fixed monthly salaries; there were no fixed hours of duty and they were also not required to attend work compulsorily on any ground. Learned counsel also pointed out that there was no authority, as per the rules, vested in the Branch Managers in appointing any person, much less the persons like the respondents herein, and that authority lay in the Managing Director of the petitioner Corporation. Learned counsel further pointed out that there were no post called 'cleaner' in the whole set up and all that the respondents used to do to attend the busses and clean them and they used to be paid Re.1/- per bus. They were not required to report to anybody nor were they under the supervisory or any other type of control of the management. From this learned counsel, suggests that they could not be said to be the 'employees' and as such they could not approach the Labour Court.

5. As against this, Shri Ganesan, leanred counsel appearing on behalf of the respondents, pointed out that the respondents had undoubtedly worked for more than 240 days in a year and as such they had become the 'workmen' of the Management and as such they could not have been arbitrarily removed from service and, therefore, the Labour Court was right in ordering their reinstatement.

6. I was thoroughly taken through the evidence and even the English translation of the Labour Court award was made available for my perusal. Seeing the award closely, it is clear that the Labour Court itself has not accepted the evidence on behalf of the respondents to the effect that

they were regular employees and drawing salaries from the Management Corporation. The Labour Court has referred to the Standing Orders and the categories of the workmen described in Standing Order No.3 and has come to the conclusion that they were casual employees. He has also held that the bus-body cleaning was done on dailywage basis and it was the work of perennial nature. It cannot, however, be ignored that in the whole set up, there was no post called ' cleaner' and these respondents were never 'appointed' to any such post either of cleaner or any other post. The Labour Court has also noted that the respondents were not able to produce any appointment order nor could they produce any removal order either. It has come in the evidence that all the staff had to be appointed only through the Employment Exchange and admittedly none of these three respondents was sponsored by the Employment Exchange. Shri Arulraj, learned counsel for the Management, therefore, very earnestly suggests that these persons could not be granted the exalted status of 'casual worker' as even the 'casual worker' had to be employed through the Employment Exchange and admittedly these respondents were not so engaged.

7. Shri Arulraj also points out that there was no managerial control over the respondents or their attendance, etc. They were not required to attend daily and entirely depended upon their own volition either to attend or not to attend and there was no question of any ' salary' being paid to them and obviously there was no further question of deduction of salary on account of their absence. Even the wages paid to them were not identical which was clear from Ex.W-1 which was admitted by the respondents. The Management examined the witnesses to suggest that there were no fixed hours of work and after cleaning the buses, respondents could go away nor was there any binding that they should clean a particular number of buses every day. The Labour Court also came to the conclusion that the respondents could not have the status of permanent employees. The only reason why the Labour Court appears to have found in favour of the respondents is that they had worked for more than 240 days in a year and as such they were workmen and were entitled to the protection under Sec.25F of the I.D. Act. The Labour Court has also relied on the judgment of the Delhi High Court in Workmen of Municipal Corporation of Delhi and another v. Management of Municipal Corporation (1987 I LLJ 85). The judgment is clearly not applicable because it deals with the daily-rated workmen. In this case, it is very difficult to hold that the respondents were 'workmen' in the sense conveyed by Sec.2(s) of the I.D. Act. If there was no master-servant relationship between the employer and the workmen and if only these persons were allowed to clean the buses for some charges, it could not mean that they were the workmen of the Management Corporation. The workmen merely had the access to the buses to clean the same and used to be paid Re.1/- per bus after the cleaning operation. That per se would not make them the 'workmen'.

8. The question of 240 days of attendance is also of no consequence for this reason that there was no requirement of these workmen to attend the depot every day and there was no leave facility, etc. to these respondents, which was an admitted position. If this was so, I fail to see as to how the respondents could be said to be the dailyrated workmen. Same is the situation in respect of the other ruling relied upon by the Labour Court in State Bank of India, Madras v. State Bank of India Employees' Union (1991 I LLJ 155). Those were the cases where there was not only 'control' of the

employer over the employees but there were regular appointment orders in favour of those workmen and they were under the complete supervision of their employer. It is, therefore, difficult to support the finding of the Labour Court that these persons had worked for more than 240 days in a year. In this case, the counting of number of days would be of no consequence because there was no question of these respondents 'attending' the work compulsorily for a particular number of days in a week or in a month. It was completely the 'choice' of the respondents to attend or not to attend.

9. In fact, a reliance came to be placed by the Management on the reported ruling in Crompton Engineering Co. (Madras) Private Limited v. Additional Labour Court, Madras and others (1975 I LLJ 207) wherein it is also observed that there was no principle or provision of law entitling the casual workers to reinstatement simply because they had worked for a long period of time. In this case, the respondents, at the most, could be called 'independent contractors' as they were not under the supervisory control of the Management; their work was not liable to be inspected and was never inspected; they were not sponsored by the Employment Exchange; they were also not given any appointment order nor were they entitled to any privileges available to the regular employees like leave, salary, etc.; and lastly, they were not removed by an order in writing. All these factors should have been properly considered and they do not appear to have been considered by the Labour Court at all.

10. In the identical circumstances, the Karnataka High Court refused to grant the relief to such workers who used to clean and wash the buses belonging to the State Transport Corporation. The Division Bench came to the conclusion that such workers could at the most be called 'piece-rated workers' and could not be given the status of ' workmen' merely because they worked for more than 240 days in a year. The Division Bench also observed in this judgment that there was no post or an existing post or a sanctioned post and, therefore, there was no question of any such person being 'appointed' to that post and being allowed to work for 240 days or more in that capacity. There would be simply no question of counting of the days of the services rendered as there was no compulsion to attend the duties. In that judgment, the Division Bench of the Karnataka High Court had pointed out that Karnataka State Road Transport Corporation was a statutory body and if any wages were paid, they would have reflected in the accounts books of that corporation. There, the workers were working on piecerate basis, i.e. Re.0.50 per for cleaning a bus. Here also, the situation is identical. The Division Bench took stock of the situation that there was no existing post or sanctioned post and, therefore, relied on the reported ruling in Madhyamik Siksha Parishad, Uttar Pradesh v. Anil Kumar Mishra (AIR 1994 SC 1638) in which, the Supreme Court had held that when there is no sanctioned post in existence, there will be no question of anybody being granted the status of the workmen on account

of that person working for more than 240 days in a year. The Division Bench, therefore, came to the conclusion that such workmen could not be said to be the workmen at all. I am in respectful agreement with the said judgment.

11. Shri Ganesan, however, brought to my notice a judgment of

the learned single Judge of this Court in W.P. No.13870 of 1994, decided on 27-11-2001, wherein the learned Judge has confirmed the award of the labour court directing the reinstatement of the respondents, taking the view that such persons were entitled to the protection under Sec.25F of the I.D. Act and since the workmen were removed without any notice under that section, they were liable to be reinstated.

12. I have gone through the judgment. This judgment seems to have been based upon the Supreme Court's ruling in M/s. Shining Tailors v. Industrial Tribunal-II, U.P. (1963 II LLJ 418) and the Division Bench judgment of this Court in Management of Indian Bank v. P.O. Industrial Tribunal (c) and another (1990 I LLJ 50). In so far as these two judgments are concerned, I do not find any similarity of the present situation. In those cases, those workmen were held to be the workmen and, therefore, it was held that they were entitled to the protection under the I.D. Act. Now, here, in fact, firstly there is nothing on record to suggest that these respondents were working for the days that they claim to have been worked and further they were stopped from the work or the work was denied to them without giving any notice in writing. On the other hand, the case of the Management is that these respondents were never under any kind of binding that they must attend on a particular day during particular hours. It has always been the case of the Management right from the beginning that there was no such a binding condition regarding their attendance, etc. and the respondents could attend at any time and if chosen, they could also absent themselves from work without owing any explanation to anybody. If this is the situation, it is difficult even to accept a finding of fact that they had worked for 240 days in a year. How many days they had worked; for how many hours did they work; when did they remain absent; etc. are all the questions not decided at all and the findings in that behalf reached by the Labour Court cannot be supported. In fact, the Supreme Court has clearly held in Delhi Development Horticulture Employees Union v. Delhi Administration, Delhi (1992 SCC 45 2)that such a person whose name is not registered with the Employment Exchange and who has not been appointed against any particular post cannot be regularised. The learned single Judge has also made a reference to that decision but has held that the claim in this case was not that of regularisation but for reinstatement and it is on that basis that the learned single Judge has proceeded to confirm the reinstatement as ordered by the labour court. In fact, if the concerned respondents did not have the status of workmen at all then, there will be no question of their being reinstated. If they were not liable to attend for work every day, there would be no question of having worked for 240 days. All these factors were not present before the learned single Judge. That ruling, therefore, will be of no help.

13. Under the circumstances, the award of the Labour Court is clearly erroneous. It is liable to be set aside. The award of the Labour Court is, therefore, set aside and the claim petitions are dismissed.

14. Before parting with the case, it must be mentioned that under the interim orders of this Court, each respondent has been paid Rs.48 ,500/- as their emoluments covered by Sec.17B of the I.D. Act. This amount has been paid to them though obviously they have not been working all these

years. In my opinion, the equities would, therefore, favour the petitioner-employer then the respondents.

14. In fine, the writ petition is allowed. Rule made absolute. No costs.

Index:Yes
Website:Yes
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To:

The Presiding Officer
Labour Court, Cuddalore